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11-28-1986

State of New York Public Employment Relations Board Decisions from November 28, 1986

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from November 28, 1986

Keywords

NY, NYS, New York State, PERB, Public Employment Relations Board, board decisions, labor disputes, labor relations

Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

POWER AUTHORITY OF THE STATE OF NEW YORK,

Employer,

-and-

CASE NO. C-3053

LOCAL 264, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN &
HELPERS OF AMERICA,

Petitioner.

TOWNLEY & UPDIKE (JOHN D. CANONI, ESQ., of Counsel),
for Employer

LIPSITZ, GREEN, FAHRINGER, ROLL, SCHULLER & JAMES
(BRUCE R. FENWICK, ESQ., of Counsel),
for Petitioner

BOARD DECISION AND ORDER

This is an appeal from an interim decision of the
Director of Public Employment Practices and Representation
(Director), filed pursuant to permission granted by us.^{1/}

The Power Authority of the State of New York (Power
Authority) moved to dismiss as untimely a certification
petition filed on March 3, 1986 by Local 264, International
Brotherhood of Teamsters, Chauffeurs, Warehousemen and

^{1/}19 PERB ¶3055 (1986).

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Helpers of America (Local 264). The Power Authority's motion relied upon §201.3(g) of our Rules of Procedure, which provides:

No petition may be filed for a unit which includes job titles that were within a unit for which, during the preceding twelve-month period, a petition was filed and processed to completion.

The motion was based upon the fact that the Director had issued a decision on November 7, 1985, dismissing as untimely a certification petition filed in May 1985 by Local 2104, International Brotherhood of Electrical Workers (Local 2104), which sought to accrete most of the employees sought herein by Local 264 to a unit represented by Local 2104.^{2/}

The Director denied the motion, concluding that because the petition filed by Local 2104 had been dismissed as untimely, it had not been "processed to completion" within the meaning of §201.3(g).

The Power Authority's appeal urges that the Director erred in concluding that a dismissal for untimeliness does not constitute the processing of a petition to completion within the meaning of §201.3(g). It claims that the

^{2/}Power Authority of the State of New York, 18 PERB ¶4077 (1985).

language and history of the Rule show that such a decision was intended to come within the meaning of the Rule.^{3/}

We find no merit in the Power Authority's contention. We agree with the Director that the Rule intends to impose the twelve-month bar where there has been a determination on the merits, such as one that certifies a majority representative, denies certification because an election

^{3/}As originally promulgated in 1969, the Rule provided:

(g) No petition may be filed for a unit which includes job titles that were within a unit for which an election was held during the prior twelve-month period, except for a petition filed under subdivision (e) of this section.

In 1971, it was renumbered §201.3(f) and amended to read:

(f) No petition may be filed for a unit which includes job titles that were within a unit for which a petition was filed and processed to completion, during the twelve-month period following disposition of that representation proceeding.

In 1974, it was renumbered §201.3(g) and amended to read:

(g) No petition may be filed for a unit which includes job titles that were within a unit for which a petition was filed, processed to completion and no employee organization was certified, during the twelve-month period following disposition of that representation proceeding.

In 1980, it was amended to read as set forth in the body of this decision. We are not aware of any documents commenting on the reasons for the promulgation of the Rule or its amendment.

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shows there is no majority representative, or finds that the unit sought is not the most appropriate one. These determinations, unlike a timeliness determination made at the commencement of a proceeding, take place after there have been extensive proceedings before PERB. As stated by the Director in New York State Thruway Authority, 10 PERB ¶4019 (1977), the purpose of the Rule is to spare the employer undue "expense and turmoil" (at 4018). It should be added that the purpose is also to avoid the dissipation of PERB's resources and, since the 1980 amendment, to spare an incumbent employee organization from undue "expense and turmoil". Where a petition has been dismissed on timeliness grounds at the commencement of a proceeding, neither this Board nor any party has been sufficiently burdened by that proceeding to require relief from a second proceeding within one year.^{4/}

We note that we have applied the same construction to the term "processed to completion" in Rule 201.10(b), which imposes a time bar on managerial/confidential applications.^{5/}

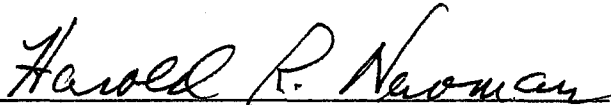
^{4/}While our decision is based upon our construction of the Rule, we believe it would be a totally inequitable application of the Rule to bar Local 264's petition because of Local 2104's untimely one.

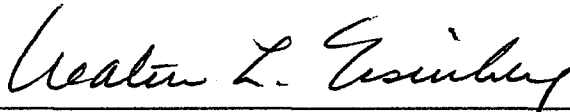
^{5/}Board of Education of the North Babylon Union Free School District, 19 PERB ¶3035, at p. 3078 n. 3 (1986).

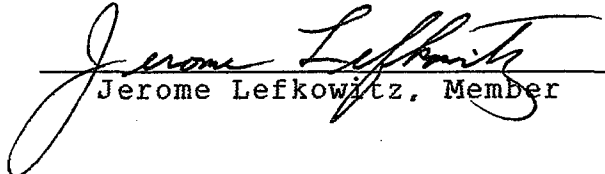
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NOW, THEREFORE, WE AFFIRM the decision of the
Director, and WE ORDER that this
matter be, and it hereby is, remanded
to the Director for further
proceedings.

DATED: November 28, 1986
New York, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member


Jerome Lefkowitz, Member

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SCHOOL DISTRICT EMPLOYMENT RELATIONS
COUNCIL OF THE CITY OF SYRACUSE

CASE NO. S-0039

for a determination pursuant to
Section 212 of the Civil Service Law.

BOARD DECISION AND ORDER

Section 212 of the Civil Service Law (CSL) declares certain provisions of the Taylor Law inapplicable to those local governments which have adopted their own provisions and procedures, which have been submitted to this Board "and as to which there is in effect a determination by the board that such provisions and procedures and the continuing implementation thereof are substantially equivalent..." to those which control this Board (emphasis supplied).

To permit this Board to ascertain annually whether the continuing implementation of local provisions and procedures are substantially equivalent to those which govern it, this Board's Counsel canvasses the appropriate governments each year to gather data on the operation of the local government's public employment relations boards (local PERBs).

In mid-June 1986, a letter and questionnaire were sent to the last-known chairman and last-known counsel of the

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School District Employment Relations Council of the City of Syracuse (Syracuse School District local PERB). A follow-up letter was sent in late July. Receiving no response, Counsel's staff telephoned the local PERB counsel, who advised he had been succeeded by another appointee to whom Counsel's correspondence had been forwarded. Thereafter, the successor counsel telephoned to advise that the questionnaire would be completed and returned by early September. Not having received a response, Counsel, by letter dated October 16, 1986, addressed to the successor counsel, with copy to the chairman of the local PERB, advised that failure to receive a response would result in a recommendation to this Board that the Syracuse School District local PERB be determined not to be in substantial compliance with the requirements of the Taylor Law.^{1/} Receiving neither acknowledgment of the letter nor a response to the questionnaire, Counsel, as he had advised the local PERB in his October letter, brought the matter and his proposed recommendation to the attention of this Board, which considered it at its November 14, 1986 meeting.

Because of the failure to respond, we are no longer warranted in concluding that the continuing implementation by the Syracuse School District local PERB of its provisions and

^{1/}N. Y. Civil Service Law, Art. 14

procedures, if indeed they are being implemented at all, is substantially equivalent to the provisions and procedures governing this Board.

NOW, THEREFORE, WE ORDER that the determination of this Board dated February 8, 1968,^{2/} approving the enactment establishing the Syracuse School District local PERB be, and the same hereby is, suspended, subject to reinstatement upon application and demonstration by the Syracuse School District local PERB that the continuing implementation of its local provisions and procedures is substantially equivalent to those governing this Board;

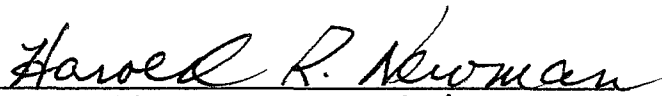
FURTHERMORE, PLEASE TAKE NOTICE that unless such application is filed by December 22, 1986, this Board shall, without further notice, rescind, pursuant to CSL §212, its order dated February 8, 1968, approving the Syracuse School District's local enactment and


^{2/1} PERB ¶344.

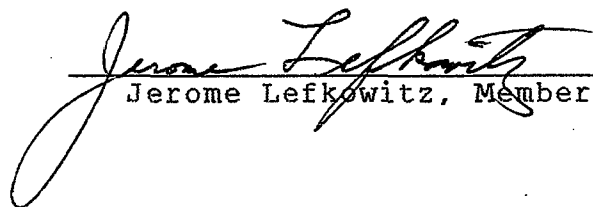
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such other orders as approved amendments to its local enactment^{3/} upon the ground that the continuing implementation of said local enactment and amendments thereof is no longer substantially equivalent to the provisions and procedures applicable to this Board.

DATED: November 28, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member


Jerome Lefkowitz, Member

^{3/} 3 PERB ¶3008, 4 PERB ¶3012, 4 PERB ¶3086, 6 PERB ¶3010, 6 PERB ¶3061, 7 PERB ¶3063, and order dated March 3, 1978.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

OTSELIC VALLEY CENTRAL SCHOOL DISTRICT,

Respondent,

-and-

CASE NO. U-8586

OTSELIC VALLEY TEACHERS ASSOCIATION,
LOCAL 2908,

Charging Party.

BOARD DECISION ON MOTION

By decision dated October 27, 1986, we affirmed the decision of the Administrative Law Judge (ALJ) and dismissed the charge filed by the Otselic Valley Teachers Association, Local 2908 (Association) against the Otselic Valley Central School District (District). By letter dated October 31, 1986, the Association requests us to reopen the matter and give the Association an opportunity to present further testimony.

In support of its request, the Association relies upon one sentence in our decision in which we noted that the record contained no evidence regarding the duties of the library media specialist (LMS). The Association asserts that it is a "victim of an undeveloped record" and wishes the


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opportunity to put in evidence regarding the "nature and extent" of the reading duties of the LMS.

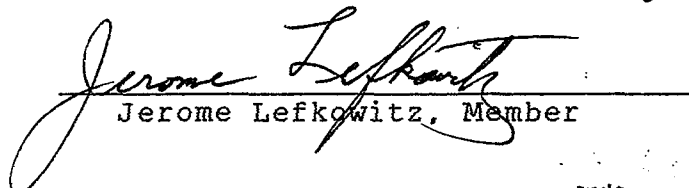
The Association misconceives the basis of our decision. While we noted the lack of evidence of the duties of the LMS, we decided the case on the same basis as did the ALJ, i.e., we assumed that one of the duties of the LMS was to read to children. We found, however, the record revealed that such duty was not performed exclusively by the LMS. We agreed with the ALJ that the record established that such duty was also performed by the library aides. We, therefore, dismissed the Association's charge which alleged that the District had unilaterally reassigned exclusive unit work to a nonunit teacher aide. Accordingly, there is no reason to reopen this matter to receive evidence regarding the reading duties of the LMS.

THEREFORE, WE ORDER that the request of the Association
be, and it hereby is, denied.

DATED: November 28, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member


Jerome Lefkowitz, Member

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

COUNTY OF ERIE (BOARD OF ELECTIONS),

Respondent,

-and-

CASE NO. U-7922

ELIZABETH A. PALMER,

Charging Party.

ROGER D. AVENT, ESQ., ERIE COUNTY ATTORNEY
(MICHAEL A. CONNORS, ESQ., SECOND ASSISTANT COUNTY
ATTORNEY, of Counsel), for Respondent

CHARLES D. WALLACE, ESQ., for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the County of Erie on behalf of its Board of Elections (respondent) to a decision of the Administrative Law Judge (ALJ) determining that the respondent violated §209-a.1(a) and (c) of the Act when it moved Elizabeth Palmer's (charging party) desk to a smoky area and refused to remove her from such smoky area. The ALJ found that such action was taken in retaliation for her having filed a grievance relating to a failure to promote her.

The charging party was hired in 1973 and was assigned duties relating to data entry, key punching and filing. It

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appears that the charging party has a severe allergy to tobacco smoke, which condition precludes her from working in smoky areas. Between 1973 and January 1984, she worked in an air-conditioned area of the office. In late 1983, in anticipation of a change in her work area to a nonair-conditioned location, the charging party spoke to Commissioner Smolinski and Deputy Commissioner DeFrancesco about her allergy. Smolinski told her to get a doctor's statement and she did. It was then decided that she would work at the switchboard in a relatively smoke-free area.

From January to November 1984, she worked primarily on the switchboard located approximately 17 to 20 feet from the desks of other workers. She alternated between the switchboard and at desks directly across from the switchboard. She also was assigned to work on a data entry machine located in the Commissioner's side office where no one smoked.

On November 19, 1984, the charging party filed a grievance with regard to the promotion of three other employees with less service than she to a position for which she believed she was qualified. Smolinski testified that he probably learned of the grievance within a day of its filing.

On Monday, November 26, 1984, the charging party left work after becoming ill from tobacco smoke while working on

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the switchboard. When she returned to work on November 28 or 29, she found that her desk had been switched with another employee. Her desk was now located in an area of the floor where almost all the employees near her smoked and where there was no ventilation except for windows. The other employee who had worked in this location was assigned to work at the switchboard.

The charging party approached her supervisors, including Smolinski. She sought to be moved from the smoky area. She was told that she would have to stay. The charging party obtained a doctor's letter which advised that the charging party must work in a smoke-free area.

Smolinski then contacted Ehinger, the County's Director of Labor Relations. Ehinger advised that the basic policy of the County was that employees should not be moved from one spot to another because of smoking. He recommended against returning the charging party to her former location. On December 7, 1984, a letter was sent to the charging party by Smolinski advising her that the respondent cannot guarantee her a work environment free of cigarette smoke. The letter states that she must work where she is assigned and she should seek other employment if the work environment is not conducive to her health. This letter was drafted by Ehinger.

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The charging party remained on the job from November 1984 until April 8, 1985, although she missed work on several occasions because of allergic reactions. Severe health problems forced her to leave her position on April 8, 1985. She thereafter received unemployment insurance and she was also awarded Workers' Compensation benefits, although the respondent has appealed the award.

ALJ'S DECISION

The ALJ found that the charging party was engaged in a protected activity when she filed her grievance and that Smolinski was aware of such filing. The ALJ also found that respondent moved the charging party to the smoky area because of the filing of the grievance. The ALJ based this finding upon a number of factors, all established by the record: Up to November 1984, respondent had made efforts to accommodate charging party's allergy by assigning her to locations which minimized the effect of tobacco smoke. The respondent offered no testimony that such accommodation affected the ability of the respondent to accomplish its mission. There is no testimony that the location of the charging party at or near the switchboard presented any operating difficulties. Indeed, the respondent offered no testimony as to the reason for the change in her work location. The move to the smoky area took place within a

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week or so of the filing of the grievance. After 11 years of employment and a history of accommodation for charging party's allergy, the respondent, for the first time, sought advice from the labor relations director concerning this employee's problem. Such advice was sought only after the charging party had been moved and after she had sought a further change. According to the ALJ, the letter of December 7 did not, nor could it, explain the move of November 28; it only sought to justify the refusal to change her again.

The ALJ's remedial order directs the respondent to compensate the charging party for lost wages since April 1985 and directs the respondent to offer to restore the charging party to her former work locations at the switchboard and in the Commissioner's side office.

EXCEPTIONS

The respondent takes exception to several findings including: 1) that Smolinski was aware of the filing of the grievance, 2) that the area to which the charging party was assigned was "extraordinarily smoke filled", 3) that respondent had previously consented to requests for accommodation, and 4) that Smolinski was personally involved in the establishment of her work location in 1983.

The respondent questions the propriety of the ALJ's finding that respondent violated the Act "by relocating the

charging party's work station and failing to remove her from the smoky area on the floor." The respondent urges that the violation alleged by the charging party was the respondent's change in policy regarding accommodation of her allergy,

which change in policy was embodied in the letter of

December 7. It argues that there is no support for a finding that the change of policy was motivated by the filing of the grievance.

The respondent also contends that the County of Erie is not responsible for the actions taken by the Commissioners of Election, and the Board of Elections cannot be held responsible for the actions of one Commissioner. Finally, the respondent urges that the remedy of the ALJ is improper. It states that the charging party's absence since April 1985 is based on her claim of compensable disability. It urges that a back pay award under these circumstances is not appropriate and a direction to put her back at the same work location would give her "tenure rights" to a particular desk.

DISCUSSION

Having reviewed the record, we affirm the ALJ's findings of fact and conclusions of law.

All of the findings to which the respondent takes exception are supported by the record. For all of the reasons set forth in the ALJ's decision, we find that but

for her filing of the grievance, the charging party's work location would not have been permanently moved to the smoky area of the office. We find that respondent violated §209-a.1(a) and (c) of the Act by relocating the charging party's work location and failing to remove her from the smoky area on the floor.

The respondent misconceives the gravamen of this charge. It is clear from the charge and the testimony that the charging party complains about her relocation to the smoky area of the office. She has alleged and proved that such move was in retaliation for her having filed a grievance. The respondent interprets her charge as a challenge to the letter of December 7, 1984, which, the respondent claims, constituted the operative change of policy. Whether or not that letter of December 7, 1984 represents a change in policy, it is clear that the letter and the circumstances leading to its mailing to the charging party do not explain the motive for the relocation complained of by the charging party.

We do not question the right of the employer to change its policy regarding accommodation of an employee with an allergy such as the charging party's. Unfortunately for the respondent's position, however, the December 7 letter does not indicate a change in policy. Rather, it is the announcement of a preexisting policy which had never been

applied to the charging party. Indeed, the policy statement had been sought by Smolinski after he had moved the charging party's work station, the obvious motivation of Smolinski being a justification of action already taken. We, therefore, agree with the ALJ that the contents of the letter of December 7 do not represent the reasons for the relocation.

We reject the argument that the County of Erie is not responsible for the actions of its Board of Elections. In effect, the County argues that the employer of the charging party is the Board of Elections, not the County. This defense to the charge was raised for the first time in the respondent's brief to the ALJ. Respondent presented no evidence at the hearing to support its position. To the extent that the record contains relevant material on this point, it suggests that the Board is in fact subordinate to the County. The County relies solely on the provisions of Election Law §3-200, et seq., which deal with the establishment and duties of the Board of Elections. These statutory provisions do not serve as a basis for a determination that the County is not the employer of the charging party. (See County of Ontario, 15 PERB ¶4089 [1982]).

The County also argues that because §3-212 of the Election Law requires the election commissioners to act in concert, Commissioner Smolinski had no authority to bind the

Board of Elections and the County. The record reflects, however, that Smolinski acted in his capacity as commissioner and as an agent of the respondent. This is a sufficient basis to hold the respondent responsible for violations of the Taylor Law.

We also adopt the remedial order recommended by the ALJ. In light of the nature of the retaliatory conduct found herein, an order directing the respondent to offer the charging party her previous work locations is appropriate to effectuate the purposes of the Act. Regardless of the County's policy regarding smoking and work stations, the charging party had been, and would have continued to be allowed to work at a smoke-free work station but for her filing of a grievance. The restoration of the status quo ante is the proper remedy.

We also agree with the ALJ that the evidence supports the conclusion that the retaliatory conduct directly contributed to the situation which forced the charging party to leave her position on April 8, 1985. Indeed, the letter of December 7, 1984 openly acknowledges that this may be the consequence of the respondent's conduct. An appropriate order directing reimbursement for lost wages is, therefore, warranted.


NOW, THEREFORE, IT IS ORDERED that the respondent:

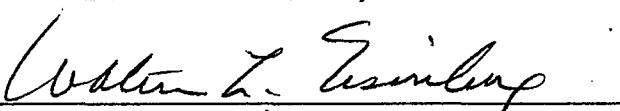
1. Cease and desist from discriminating against the charging party because she filed a grievance;

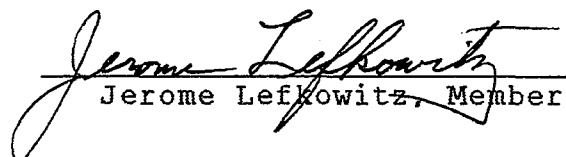
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2. Compensate the charging party for lost wages and benefits, including use of sick leave time, as a result of the relocation of the charging party's work station to the floor in late November 1984, less any unemployment insurance, Workers' Compensation benefits, or earnings from other employment, from April 1985, until respondent makes the offer required by paragraph 3 of this order, with interest on any sum owing at the maximum legal rate of interest;
3. Offer to restore the charging party to her former position at her work locations at the switchboard and in the Commissioner's side office;
4. Cease and desist from interfering with, restraining, coercing or discriminating against the charging party or any other employee for the exercise of rights protected by the Act;
5. Sign and conspicuously post a notice in the form attached in all locations throughout the department ordinarily used to communicate information to employees.

DATED: November 28, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member


Jerome Lefkowitz, Member

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APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify employees of the County of Erie Board of Elections that:

1. We will not discriminate against Elizabeth A. Palmer because she filed a grievance;
2. We will compensate Elizabeth A. Palmer for lost wages and benefits, including use of sick leave time, as a result of the relocation of her work station to the floor in late November 1984, less any unemployment insurance, Workers' Compensation benefits, or earnings from other employment, since April 1985, with interest on any sum owing at the maximum legal rate of interest;
3. We will offer to restore Elizabeth A. Palmer to her work locations at the switchboard and the Commissioner's side office;
4. We will not interfere with, restrain, coerce or discriminate against Elizabeth A. Palmer or any other employee for the exercise of rights protected by the Public Employees' Fair Employment Act.

County of Erie Board of Elections

Dated

By
(Representative) (Title)

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
UNITED UNIVERSITY PROFESSIONS,
Respondent,

-and-

CASE NO. U-8347

THOMAS C. BARRY,
Charging Party.

INTERIM BOARD DECISION ON MOTION

Thomas C. Barry, the charging party in this proceeding, has requested us to issue an order directing the United University Professions (UUP) to place all agency fees which it is collecting in an escrow account pending our decision on UUP's exceptions to the decision of the Administrative Law Judge (ALJ) in this matter.

The charging party's motion was made in response to the request of the UUP for an extension of time to November 26, 1986, to file its exceptions to the decision of the ALJ dated October 23, 1986. In that decision, the ALJ determined that UUP's agency shop fee refund procedures for 1984-85 and 1985-86 violate §209-a.2(a) of the Act in several respects.

The requested extension of time has been granted. The charging party opposed the extension primarily on the ground that this matter has continued for too long as a result, he

asserts, of adjournments and other extensions granted to UUP. The UUP urges that the charging party has requested an "extraordinary" form of relief which could damage the financial viability of the union and its ability to serve approximately 13,000 members and some 4,000 agency fee payers.

It is not clear that we have the authority to grant the requested interim relief.^{1/} However, assuming we have such authority, we find that such an order is not, under the circumstances of this case, necessary to effectuate the purposes and provisions of the Act.

We perceive no irreparable harm to the charging party if we act only after a full consideration of the record and the arguments of the parties. We have adequate power to remedy, if warranted, any infringement of the charging party's rights. To the extent that the charging party's request may redound to the benefit of the other agency fee payers, who are not parties to this proceeding, we may note that this proceeding cannot be considered in the nature of a class action. In addition, if more general relief is warranted in this matter, its extent and nature should await a careful

^{1/}See CSEA Inc. v. Helsby, 21 N.Y.2d 541, 1 PERB ¶702 (1968).

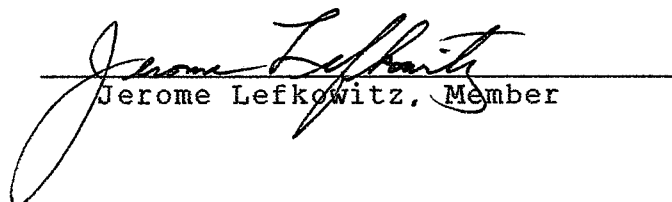
consideration of the respective interests of the agency fee payers and the UUP.

Accordingly, WE ORDER that the motion of the charging party be, and it hereby is, denied.

DATED: November 28, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member


Jerome Lefkowitz, Member

10683

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

EDWARDS-KNOX CENTRAL SCHOOL DISTRICT,
Employer,

-and-

CASE NO. C-3061

EDWARDS-KNOX TEACHERS ASSOCIATION,
NEA/NY,

Petitioner,

-and-

EDWARDS-KNOX TEACHERS ASSOCIATION,
NYSUT,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Edwards-Knox Teachers Association, NEA/NY has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All regularly employed full-time and part-time certified instructional personnel, including guidance counselors and librarians.

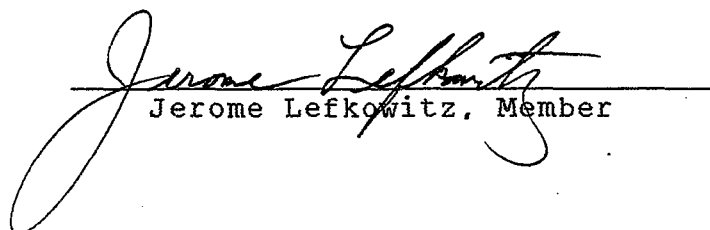
Excluded: Administrators, registered nurses and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Edwards-Knox Teachers Association, NEA/NY and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the above unit, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: November 28, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member


Jerome Lefkowitz, Member

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NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD
50 WOLF ROAD
ALBANY, NEW YORK 12205

COUNSEL
MARTIN L. BARR

MEMORANDUM

TO: Alyse Gray
Assistant Counsel to the Governor

FROM: Martin L. Barr
Counsel, Public Employment Relations Board

DATE: November 25, 1986

RE: 1987 Legislative Proposals - Civil Service #1, #2, #5,
#7, #8

#1

The Public Employment Relations Board has no objection to the proposal to consolidate the functions of the Department of Civil Service and the Governor's Office of Employee Relations nor to the manner in which this bill proposes to effectuate that consolidation. We do, however, object to one item in the proposed bill.

Section 71 of the proposed bill amends subdivision 6 of §205 of the Civil Service Law, which section is part of the Taylor Law. That subdivision presently provides that neither the President of the Civil Service Commission nor the Civil Service Commission nor any officer, board or agency of the Department of Civil Service shall supervise, direct or control PERB in the performance of its duties or in the exercise of its statutory functions. The bill proposes to amend the subdivision to reflect the change in the name of the department from "Civil Service" to "Human Resources Management". However, the proposed amendment does not reflect the fact that, under this bill, the President of the Civil Service Commission will no longer be the head of the renamed department. It is essential to the continued independence of the Public Employment Relations Board that the subdivision contains a

specific reference to the Commissioner of the Department of Human Resources Management as well as to the President of the Civil Service Commission and the Civil Service Commission.

Accordingly, subdivision 6 of §205 of the Civil Service Law should be amended as follows:

Notwithstanding any other provisions of law, neither the president of the civil service commission nor the civil service commission [or] nor the commissioner or any [other] officer, [employer] employee, board or agency of the department of [civil service] human resources management shall supervise, direct or control the board in the performance of any of its functions or the exercise of any of its powers under this article; provided, however, that nothing herein shall be construed to exempt employees of the board from the provisions of the civil service law.

#2, #5, #7, #8

The Public Employment Relations Board has no objection to any of these proposals, although we recognize that #8 is essentially an alternative to #1.

MLB:jbs